

¹ Docket No. 04-1327 (issued November 19, 2004).

appellant's attending Board-certified orthopedic surgeon, Dr. Mark C. Deibert, stated in a December 4, 2001 report that appellant's disability beginning February 1, 2001 was related to the accepted condition and very likely represented a natural progression of the accepted injury, and that there was no intervening cause or exposure. But the Board found that this report was of limited probative value due to its vague opinion on causal relationship and its lack of medical rationale, in particular its lack of an explanation of the medical process through which the accepted employment injuries worsened to the point that they caused total disability on or after February 1, 2001. The facts of the case, as set forth in the prior decision, are incorporated by reference.

On March 30, 2005 appellant requested reconsideration and submitted a March 24, 2005 report from Dr. Deibert that set forth the history of appellant's December 18, 1998 employment injury and described the surgeries performed on his shoulders. Dr. Deibert stated:

"[Appellant] was released to return to light duty with substantial restrictions in June 2000. Symptoms worsened after the return to work. Without any intervening injury, the condition naturally progressed until [appellant] was no longer able to continue at work beginning February 1, 2001. [Appellant] suffered from a full thickness tear of the left rotator cuff and a right shoulder partial tear of the rotator cuff. [Appellant's] symptoms deteriorated in a continuous progression. [Appellant] continues to suffer from bilateral shoulder pain. I wanted to see how he would do when he exerted himself more. He did not do well.

"Patients with workers' compensation injuries are returned to work with an estimated level of appropriate level of activity. This educated guess is subject to revision after observing the patient since there is the potential that the level is excessive. In [appellant's] case, his original symptoms progressively worsened after his return to work. For that reason, I took him off work again February 1, 2001. The original condition has persisted and caused this inability to work without an intervening injury.

"[Appellant] needs additional surgery to repair both the right and left rotator cuff tears. This surgery is directly related to the injuries at work as treated previously with approval. The postoperative MRI [scan] of the left shoulder reveals a full thickness rotator cuff tear. I expect to repair the partial thickness tear of the right rotator cuff and repair the full thickness tear of the left rotator cuff."

By decision dated May 9, 2005, the Office found that appellant's request for reconsideration did not raise a substantive legal question and did not include new and relevant evidence, and that it therefore was insufficient to warrant review of the Office's prior decision.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²

ANALYSIS

Appellant's March 30, 2005 request for reconsideration did not show that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. The request for reconsideration was accompanied by a March 24, 2005 medical report from appellant's attending Board-certified orthopedic surgeon, Dr. Deibert. This report, however, merely repeated what Dr. Deibert had stated in a December 4, 2001 report. In both reports Dr. Deibert stated that there was no intervening injury, and that appellant's symptoms represented a natural progression of his accepted injury. The March 24, 2005 report essentially duplicated statements from Dr. Deibert's prior report. It does not constitute relevant and pertinent new evidence not previously considered by the Office, and does not constitute a basis for reopening the case for further review of the merits of appellant's claim.

CONCLUSION

The Office properly refused to reopen appellant's case for further review of the merits of his claim.

² *Eugene F. Butler*, 36 ECAB 393 (1984).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board